

1 IN THE UNITED STATES DISTRICT COURT FOR THE
 2 NORTHERN DISTRICT OF OKLAHOMA
 3
 4

5 W. A. DREW EDMONDSON, in his)
 6 capacity as ATTORNEY GENERAL)
 7 OF THE STATE OF OKLAHOMA and)
 8 OKLAHOMA SECRETARY OF THE)
 9 ENVIRONMENT C. MILES TOLBERT,)
 10 in his capacity as the)
 11 TRUSTEE FOR NATURAL RESOURCES)
 12 FOR THE STATE OF OKLAHOMA,)

13 Plaintiff,)

14 vs.) 4:05-CV-00329-TCK-SAJ

15 TYSON FOODS, INC., et al,)

16 Defendants.)

17 - - - - -
 18 VOLUME II OF THE VIDEOTAPED
 19 DEPOSITION OF BERTON FISHER, PhD, produced as a
 20 witness on behalf of the Defendants in the above
 21 styled and numbered cause, taken on the 4th day of
 22 September, 2008, in the City of Tulsa, County of
 23 Tulsa, State of Oklahoma, before me, Lisa A.
 24 Steinmeyer, a Certified Shorthand Reporter, duly
 25 certified under and by virtue of the laws of the
 State of Oklahoma.

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EXHIBIT

68

1 seriously injured in a motor scooter accident. He
2 was thrown over a car and landed on his head
3 basically.

4 Q All right. In your non-medical opinion,
5 there's been some cognitive effect that Mr. Miller 11:32AM
6 has suffered?

7 A The observations that I made of Mr. Miller as
8 a friend and someone I'm very fond of was that after
9 those incidents or in the course of time, his
10 behavior became a little erratic. 11:33AM

11 Q Okay. Now, since you left the employment with
12 Gardere & Wynne, you have served as a private
13 consultant within two firms, Exponent, which is a
14 national scale company, and then more recently
15 Lithochimeia, which is your own company; correct? 11:33AM

16 A That's correct.

17 Q During this period post Gardere & Wynne, what
18 percentage of your work is associated with legal
19 matters? They don't have to be in litigation but
20 they're in legal matters. 11:33AM

21 A Well, setting aside the University of Tulsa
22 employment, virtually all, probably 95 percent.

23 Q Okay. You made some comments yesterday
24 explaining your expertise, and I gather from what
25 you've said that you have been engaged in one 11:34AM

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1 A Oh, when. Well, when they clean out the
2 house, which is typically based upon looking at the
3 ODAFF records. We're looking at this as a
4 population of everybody who is regulated as a
5 poultry grower and everybody who is spreading for a 05:18PM
6 limited time period from the late 1990s forward,
7 they're spreading -- beginning to spread this
8 material from the data dominantly February, March,
9 April, May, June, with the major portion of it
10 taking place in March and April. 05:18PM

11 Q Okay. I think you started to answer my
12 question when you said relatively close to when they
13 clean out, an individual grower may land apply. Did
14 you do any analysis about when they would actually
15 spread their litter, what factors determined litter 05:19PM
16 application, when?

17 MR. GARREN: Object to form.

18 A Okay. This material is typically put out
19 during the period where nitrogen that's present in
20 it will do the most good in terms of germinating 05:19PM
21 forage. They might be hampered in spreading this
22 material during wet conditions because you can't get
23 trucks out into the field. There would be an issue
24 with respect to the availability of clean-out
25 contractors. I mean, those are all kind of factors. 05:19PM